

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA, Plaintiff, vs. VICTOR F. MENDOZA-HERNANDEZ, Defendant.)	CASE NO. 8:09CR163 TENTATIVE FINDINGS
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The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 34, 36). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Both parties object to the drug quantity and the base offense level reflected in ¶ 35. The plea agreement states the parties' agreement that the Defendant should be held responsible for at least 50 but less than 200 grams of methamphetamine, resulting in the application of base offense level 26. (Filing No. 23, ¶ 6(b)(i).) The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 26.

The Defendant objects to the 2-level enhancement for possession of a dangerous weapon under U.S.S.G. § 2D1.1(b)(1) in ¶ 36. The plea agreement states the parties' agreement that with respect to Count II "[t]he Defendant possessed a firearm in connection with the offense of conviction, and such conduct qualifies the Defendant for a two level upward adjustment pursuant to U.S.S.G. § 2D1.1(b)(1)." (*Id.*, ¶ 6(b)(ii).) Counts I and II are grouped, and the parties contemplated the grouping of those counts according to the plea agreement. (*Id.*, ¶ 6(d).) Therefore, this objection is denied.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing Nos. 34, 35) are granted in part and denied in part as follows:
 - a. the objection to ¶ 36 (gun enhancement) is denied;
 - b. the objection to ¶ 35 (drug quantity and base offense level) is granted;
2. The government's objection to ¶ 35 (drug quantity and base offense level) of the PSR (Filing No. 36) is granted;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 13th day of October, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge